

Schena, Cristeen

From: Grantham, Nancy
Sent: Tuesday, September 16, 2014 10:47 AM
To: Gutro, Doug; O'Neil, Kelsey
Subject: FW: Cape Wind folo up

From: Greene, Cynthia
Sent: Friday, September 12, 2014 2:39 PM
To: Grantham, Nancy; Deegan, Dave
Subject: FW: Cape Wind folo up

John Moskal checked for Alliance reaction – see below

Cynthia L. Greene, Manager
Energy and Climate Unit
US EPA New England
Office of Ecosystem Protection
5 Post Office Square - Suite 100
Mail Code: OEP05-2
Boston, MA 02109-3912
617-918-1813
617-918-0813 fax
greenecynthia@epa.gov
<http://www.epa.gov/region1/topics/envpractice/eefficiency.html>

From: Moskal, John
Sent: Friday, September 12, 2014 2:37 PM
To: Greene, Cynthia
Subject: RE: Cape Wind folo up

From the Alliance today:

Press Release - Statement of APNS on Cape Wind's New Bedford Announcement

September 12, 2014

Statement of Audra Parker, CEO and President, Alliance to Protect Nantucket Sound, on Today's New Bedford Announcement

"Cape Wind's federal permits have always called for staging in Rhode Island. The project must now undergo additional federal review for a move to a New Bedford location. With looming deadlines the project faces to begin construction in Nantucket Sound or lose its power purchase contracts with both National Grid and NStar, today's announcement adds new hurdles to a project already struggling under the weight of lawsuits, increased opposition due to its exorbitant electricity costs, and a lack of investors.

Cape Wind's plans, once again announced in the middle of an election cycle, allows developers to appear as if they would create jobs in this state. This is a common trend of broken promises. Similar previous pledges to create in-state jobs have been followed by contracts to send Cape Wind work out of state or overseas.

Cape Wind previously reneged on a deal with a local company, Mass Tank, to build its foundations in Massachusetts, instead sending these jobs overseas. Developers also announced a contract with Cianbro Corp. in Maine to construct elements of the project, and in the process snubbing thousands of Massachusetts electrical workers who were promised these jobs.

Cape Wind has announced every year since 2005 that it will begin construction next year. But in 2014 as in previous years, they continue to face significant legal challenges, financial hurdles and quickly approaching deadlines."

From: Greene, Cynthia
Sent: Friday, September 12, 2014 1:18 PM
To: Moskal, John
Subject: FW: Cape Wind folo up

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US EPA New England
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<http://www.epa.gov/region1/topics/envpractice/eefficiency.html>

From: O'Neil, Kelsey
Sent: Friday, September 12, 2014 1:18 PM
To: Grantham, Nancy; Deegan, Dave
Cc: Zimmerman, Emily; Greene, Cynthia
Subject: RE: Cape Wind folo up

Cape Wind signs lease agreement with South Terminal

By **Ariel Wittenberg**

awittenberg@s-t.com

September 12, 2014 12:00 AM

NEW BEDFORD — Cape Wind has signed a lease agreement with the state to use South Terminal for the staging and construction of its 130-turbine offshore wind project, marking a significant milestone in the city's efforts to become a hub for the offshore wind industry.

The offshore wind developer is expected to officially announce the news at 11 a.m. today with Gov. Deval Patrick at the Massachusetts Clean Energy Center's Wind Technology Testing Center in Charlestown.

"Cape Wind is going to be built out of New Bedford, not Rhode Island, that's the bottom line," Patrick told The Standard-Times Thursday night.

Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said.

Cape Wind had previously signed lease options with both South Terminal, now formally called the Massachusetts Marine Commerce Terminal, and Rhode Island's Quonset Point.

Mayor Jon Mitchell called the step "a historic moment" in the city's efforts to bring a new age of economic development by aligning itself with the offshore wind industry.

"New Bedford has been preparing itself for the launch of this industry for a long time and we are more ready than any port in America to become a center of the offshore wind industry," he said. "Our approach has always been what's in the city's long-term best interests, that's why offshore wind has been the subject of our relentless focus."

Later Thursday night, Mitchell — who said he was not invited to speak at today's announcement — also said he is unable to attend.

Sen. Mark Montigny, meanwhile, took exception to the exclusion of New Bedford in the name change. "I'll be looking at drafting a bill ASAP" to restore the city's name to the terminal, Montigny said Thursday night.

The name change also sparked discussion at the New Bedford City Council Thursday night where councilors were considering a motion to "strenuously object" to the change and restore the terminal to "its rightful" name as the New Bedford Marine Commerce Terminal.

For his part, Cape Wind President Jim Gordon said the lease agreement shows that he is confident South Terminal, which is still under construction, will be completed in time for Cape Wind to begin using it in January.

"We believe that we will be the first of many offshore wind projects to deploy out of this facility," Gordon said. "We know there are a lot of skilled tradesmen in the region and people who are ready to roll up their sleeves and work with us."

South Terminal, which is three months away from completion, was designed by Massachusetts Clean Energy Center specifically to accommodate the weight of offshore wind turbines and the cranes required to put them together. The facility on average will be able to support 4,100 pounds per square foot and up to 20,485 pounds per square foot in certain places. It is being built on an accelerated schedule in order to accommodate Cape Wind's timeline.

Cape Wind will pay a total of \$4.5 million in rent to the Massachusetts Clean Energy Center, which owns the 28-acre facility, for two years. During that time, Cape Wind will be the only operator of the facility and the terms of lease allow for two one-year extensions.

Cape Wind has said that the assembly, staging and ocean construction of the project will create 600 to 1,000 jobs. Once in operation, the project is expected to employ 150 people, at least 50 of whom are expected to be based in Falmouth to do maintenance on the Nantucket Sound turbines.

The lease agreement is significant not just for Cape Wind but for New Bedford and the commonwealth's future involvement in the offshore wind industry. City officials have long stated that being the first port to stage an offshore wind farm will help the city to attract future projects and industry manufacturers.

"This is a great day for Cape Wind, the offshore wind industry, and especially for the City of New Bedford," New Bedford Wind Energy Center Director Matthew Morrissey said.

Patrick agreed.

"This will be the nation's first offshore wind farm and that's important economically from an environmental perspective and from a symbolic perspective," he said. "There is a first-mover's advantage."

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Kelsey O'Neil
Congressional Liaison, Community Involvement Coordinator
oneil.kelsey@epa.gov
Office: 617-918-1003
Cell: 857-998-0226

From: Grantham, Nancy
Sent: Friday, September 12, 2014 1:14 PM
To: Deegan, Dave
Cc: Zimmerman, Emily; O'Neil, Kelsey; Greene, Cynthia
Subject: RE: Cape Wind folo up

Don't know that this decision has been made --- can we pull up the story? Thanks ng

From: Deegan, Dave
Sent: Friday, September 12, 2014 1:12 PM
To: Grantham, Nancy
Cc: Zimmerman, Emily; O'Neil, Kelsey
Subject: Fwd: Cape Wind folo up

Not sure who/how to follow up?

~~~~~  
Dave Deegan  
US EPA New England  
o 617.918.1017  
c 617.594.7068

Begin forwarded message:

**From:** "Cassidy, Patrick" <[pcassidy@capecodonline.com](mailto:pcassidy@capecodonline.com)>

**Date:** September 12, 2014 at 12:57:34 PM EDT

**To:** David Deegan-EPA <[deegan.dave@epa.gov](mailto:deegan.dave@epa.gov)>

**Subject:** Cape Wind folo up

Dave,

I'm writing a follow up to the story today about Cape Wind's decision to choose New Bedford for its construction operations. Can you give me a call to answer some questions about any EPA actions necessary because of the change (Clean Air Act permit) and about EPA's involvement in the construction of the port terminal in New Bedford (dredging, PCBs etc.) Writing for tomorrow's paper on 5 p.m. deadline. Thanks.

Patrick

Patrick Cassidy

Cape Cod Times

508-916-0415

[pcassidy@capecodonline.com](mailto:pcassidy@capecodonline.com)

On Twitter [@PCassidyCCT](https://twitter.com/PCassidyCCT) and [Facebook](#)

This message may contain confidential and/or privileged information. If you are not the intended recipient or authorized to receive this for the intended recipient, you must not use, copy, disclose or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by sending a reply e-mail and delete this message. Thank you for your cooperation.

## Schena, Cristeen

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**From:** Sandy Taylor <sandyt@saveoursound.org>  
**Sent:** Tuesday, September 16, 2014 10:10 AM  
**To:** McDonnell, Ida  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:  
Thanks for the update.  
Sandy

Sandy Taylor  
Executive Assistant  
4 Barnstable Road  
Hyannis, MA 02601  
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508-775-9725 (f)  
[sandyt@saveoursound.org](mailto:sandyt@saveoursound.org)  
[www.saveoursound.org](http://www.saveoursound.org)

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**From:** McDonnell, Ida [mailto:McDonnell.Ida@epa.gov]  
**Sent:** Tuesday, September 16, 2014 8:42 AM  
**To:** Sandy Taylor  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

We have not received any notice of staging area changes from the applicants.

Feel free to keep checking in.

Ida E. McDonnell, Manager  
Air Permits, Toxics and Indoor Programs Unit  
EPA-New England, Region 1  
5 Post Office Square  
Boston, MA 02109-3912  
Phone 617-918-1653  
Fax 617-918-0653

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**From:** Sandy Taylor [mailto:[sandyt@saveoursound.org](mailto:sandyt@saveoursound.org)]  
**Sent:** Monday, September 15, 2014 2:49 PM  
**To:** McDonnell, Ida  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:

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Now that there has been an official announcement on this location change, has the EPA received any notice of project change from Cape Wind regarding the move to new Bedford as reported in the press? If so, could you provide a copy of the application/notice?

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"Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said."

Thank you again for your assistance.

Sandy

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**Sent:** Tuesday, August 26, 2014 10:29 AM  
**To:** Sandy Taylor  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

Sandy,

You sent me an e-mail on August 19, 2014 asking if "... if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?"

At this time, EPA is not issuing any additional permits to Cape Wind (CWA). As you know, CWA has requested EPA to extend the Phase I Construction end date for the current Outer Continental Shelf Air Permit issued to Cape Wind Associates, LLC (CWA) dated January 7, 2011. CWA has asked us to extend the end date from September 30, 2015 to September 30, 2017. EPA is currently reviewing this request and is evaluating whether CWA has met the conditions for such a change as specified in Section XI of the permit.

Section XI of the permit also contains a requirement regarding ESA. I am enclosing several letters recently sent regarding the status of the project's compliance with ESA. In particular, I have included a copy of EPA's letter to the Bureau of Ocean Energy Management where, based on the facts, EPA has determined that reinitiating the consultation requirements under ESA is unnecessary.

I will send you our determination once EPA has completed its review of CWA's extension request.

Sincerely,

Ida E. McDonnell, Manager

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**From:** Sandy Taylor [<mailto:sandyt@saveoursound.org>]  
**Sent:** Tuesday, August 19, 2014 10:20 AM  
**To:** McDonnell, Ida  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

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Thank you for your response to our questions, sorry for the delay getting back to you.

We would like to inquire if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?

Again, thank you for response.  
Sandy

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**From:** McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]  
**Sent:** Wednesday, August 13, 2014 1:31 PM  
**To:** Sandy Taylor  
**Subject:** RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

I have the following responses to your questions below:

1. What is the status of EPA's review of Cape Wind's extension request?

EPA is currently reviewing the Cape Wind Associates request made on March 7, 2014 to extend the end date of the Phase I construction period from September 30, 2015 to September 30, 2017

2. What is the status on of Cape Wind request, timeline and process?

EPA will either grant or deny, via a letter, the request to increase the Phase I construction period in accordance with Conditions XI.A.1-4 of the Outer Continental Shelf Air Permit OCS-R1-01. At this time we have not established a firm response date to Cape Wind Associates request. With the recent resolution of the outstanding issues involving consultation under the Endangered Species Act, my staff will now focus on reviewing all other pertinent information regarding extending the end date for the Phase I construction period. I have attached to this



e-mail our letter dated August 12, 2014 to the Bureau of Ocean Energy Management. Once we have come to a decision, our response letter regarding the extension request will be signed by the Regional Administrator.

3. Will the public have an opportunity to comment?

Granting or denying the extension of the Phase I construction period does not require modifying the permit. If the permit was required to be modified, EPA would need to follow the process for modifying the permit contained in 40 CFR parts 55 and 124. At this time EPA is not planning to conduct a formal public comment period concerning the extension request.

4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

Ida E. McDonnell, Manager  
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**From:** Sandy Taylor [<mailto:sandyt@saveoursound.org>]

**Sent:** Friday, August 08, 2014 2:14 PM

**To:** McDonnell, Ida

**Subject:** Follow up on 5/22/14 Cape with Audra Parker

Ida:

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- EPA to provide a copy of their decision when made.
- Will you be responding to our comment letter (see attached)?

Thank you very much,  
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**Sent:** Monday, September 15, 2014 2:49 PM  
**To:** McDonnell, Ida  
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Now that there has been an official announcement on this location change, has the EPA received any notice of project change from Cape Wind regarding the move to new Bedford as reported in the press? If so, could you provide a copy of the application/notice?

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EPA will either grant or deny, via a letter, the request to increase the Phase I construction period in accordance with Conditions XI.A.1-4 of the Outer Continental Shelf Air Permit OCS-R1-01. At this time we have not established a firm response date to Cape Wind Associates request. With the recent resolution of the outstanding issues involving consultation under the Endangered Species Act, my staff will now focus on reviewing all other pertinent information regarding extending the end date for the Phase I construction period. I have attached to this e-mail our letter dated August 12, 2014 to the Bureau of Ocean Energy Management. Once we have come to a decision, our response letter regarding the extension request will be signed by the Regional Administrator.

3. Will the public have an opportunity to comment?

Granting or denying the extension of the Phase I construction period does not require modifying the permit. If the permit was required to be modified, EPA would need to follow the process for modifying the permit contained in 40 CFR parts 55 and 124. At this time EPA is not planning to conduct a formal public comment period concerning the extension request.

4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

Ida E. McDonnell, Manager  
Air Permits, Toxics and Indoor Programs Unit  
EPA-New England, Region 1  
5 Post Office Square  
Boston, MA 02109-3912  
Phone 617-918-1653  
Fax 617-918-0653

---

**From:** Sandy Taylor [<mailto:sandyt@saveoursound.org>]  
**Sent:** Friday, August 08, 2014 2:14 PM  
**To:** McDonnell, Ida  
**Subject:** Follow up on 5/22/14 Cape with Audra Parker

Ida:

I am following up your call with Audra Parker regarding Cape Wind's CA permit on 5/22/14.

There were several questions that you were going to get back to us on after reviewing them with Jill Metcalf.

- What is the status of EPA's review of Cape Wind's **EXTENSION** request?
- What is the status on of Cape Wind request, timeline and process?

- Will the public have an opportunity to comment?
- EPA to provide a copy of their decision when made.
- Will you be responding to our comment letter (see attached)?

Thank you very much,  
Sandy

Sandy Taylor  
Executive Assistant  
4 Barnstable Road  
Hyannis, MA 02601  
508-775-9767  
508-775-9725 (f)  
[sandyt@saveoursound.org](mailto:sandyt@saveoursound.org)  
[www.saveoursound.org](http://www.saveoursound.org)

## Schena, Cristeen

---

**From:** McDonnell, Ida  
**Sent:** Monday, September 15, 2014 8:42 AM  
**To:** Cooke, Donald  
**Subject:** RE: Update on Cape Wind

Can you give me a call so we can discuss

Ida E. McDonnell, Manager  
Air Permits, Toxics and Indoor Programs Unit  
EPA-New England, Region 1  
5 Post Office Square  
Boston, MA 02109-3912  
Phone 617-918-1653  
Fax 617-918-0653

---

**From:** Cooke, Donald  
**Sent:** Monday, September 15, 2014 7:51 AM  
**To:** McDonnell, Ida  
**Subject:** FW: Update on Cape Wind

For Your Information

Donald O. Cooke, Environmental Scientist  
U.S. Environmental Protection Agency  
EPA New England Regional Office  
Office of Ecosystem Protection, Air Quality Planning Unit  
5 Post Office Square - Suite 100, (Mail code OEP05-2)  
Boston, MA 02109 - 3912

Telephone (617) 918-1668  
Fax # (617) 918-0668  
E-Mail [cooke.donald@epa.gov](mailto:cooke.donald@epa.gov)

---

**From:** Bureau of Ocean Energy Management Office of Public Affairs [<mailto:tracey.moriarty@boem.gov>]  
**Sent:** Friday, September 12, 2014 10:13 AM  
**To:** Cooke, Donald  
**Subject:** Update on Cape Wind

Note to Stakeholders

Sept. 12, 2014



Good morning.

As one of our valued stakeholders interested in offshore renewable energy development, the Bureau of Ocean Energy Management (BOEM) would like to notify you of some recent milestones regarding the Cape Wind Energy Project.

- On May 20, 2014, Cape Wind Associates (CWA) submitted a Facility Design Report (FDR) and a Fabrication and Installation Report (FIR) for BOEM's review. The FDR provides specific details on the design of the wind power facility, and the FIR describes how the facility's components will be fabricated and installed.
- On July 25, 2014, CWA submitted revisions to its Construction and Operations Plan (COP), which BOEM originally approved in April 2011. These revisions can be found [here](#).
- BOEM reviewed the proposed revisions to the COP and prepared an [Environmental Assessment \(EA\)](#) that considered (1) whether the revisions to the COP are substantial changes in the proposed action that are relevant to environmental concerns, and (2) whether there are significant new circumstances or information, including activity and equipment details provided in the FIR and FDR, relevant to environmental concerns and bearing on the proposed action or its impacts. BOEM used the EA to determine whether it could make a Finding of No New Significant Impact (FONNSI) or whether preparing a Supplemental Environmental Impact Statement would be necessary before issuing a decision on the COP revisions.
- On September 8, 2014, BOEM issued a [FONNSI](#), which concluded that there were no new significant impacts associated with the proposed revisions to the COP that were not already considered in the 2010 Final Environmental Impact Statement. BOEM then approved the revisions to the COP with modifications on September 9, 2014, and determined that it has no objections to the FDR or FIR. BOEM's letter of approval can be found [here](#).

Additional information related to the Cape Wind Energy Project is located on BOEM's website by clicking [here](#), or you may contact me at your convenience.

Thank you,

Tracey Moriarty  
Office of Public Affairs (Offshore Renewable Energy)  
Bureau of Ocean Energy Management  
Tel: (703) 787-1571  
Cell: (202) 304-6476  
[Tracey.Moriarty@boem.gov](mailto:Tracey.Moriarty@boem.gov)

## About the Bureau of Ocean Energy Management

The Bureau of Ocean Energy Management (BOEM) promotes economic development, energy independence, and environmental protection through responsible, science-based management of offshore conventional and renewable energy development.



For More Information:  
BOEM Office of Public Affairs  
(202) 208-6474

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[www.BOEM.gov](http://www.BOEM.gov)

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Bureau of Ocean Energy Management | [BOEMPublicAffairs@boem.gov](mailto:BOEMPublicAffairs@boem.gov) | Washington | DC | 20240

## Schena, Cristeen

---

**From:** Grantham, Nancy  
**Sent:** Friday, September 12, 2014 2:44 PM  
**To:** O'Neil, Kelsey  
**Subject:** Fwd: Cape Wind folo up

Sent from my iPhone

Begin forwarded message:

**From:** "Greene, Cynthia" <[Greene.Cynthia@epa.gov](mailto:Greene.Cynthia@epa.gov)>  
**Date:** September 12, 2014 at 2:38:39 PM EDT  
**To:** "Grantham, Nancy" <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>, "Deegan, Dave" <[Deegan.Dave@epa.gov](mailto:Deegan.Dave@epa.gov)>  
**Subject:** FW: Cape Wind folo up

John Moskal checked for Alliance reaction – see below

Cynthia L. Greene, Manager  
Energy and Climate Unit  
US EPA New England  
Office of Ecosystem Protection  
5 Post Office Square - Suite 100  
Mail Code: OEP05-2  
Boston, MA 02109-3912  
617-918-1813  
617-918-0813 fax  
[greenecynthia@epa.gov](mailto:greenecynthia@epa.gov)  
<http://www.epa.gov/region1/topics/envpractice/efficiency.html>

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**From:** Moskal, John  
**Sent:** Friday, September 12, 2014 2:37 PM  
**To:** Greene, Cynthia  
**Subject:** RE: Cape Wind folo up

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September 12, 2014

**Statement of Audra Parker, CEO and President, Alliance to Protect Nantucket Sound, on Today's New Bedford Announcement**

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Cape Wind’s plans, once again announced in the middle of an election cycle, allows developers to appear as if they would create jobs in this state. This is a common trend of broken promises. Similar previous pledges to create in-state jobs have been followed by contracts to send Cape Wind work out of state or overseas.

Cape Wind previously reneged on a deal with a local company, Mass Tank, to build its foundations in Massachusetts, instead sending these jobs overseas. Developers also announced a contract with Cianbro Corp. in Maine to construct elements of the project, and in the process snubbing thousands of Massachusetts electrical workers who were promised these jobs.

Cape Wind has announced every year since 2005 that it will begin construction next year. But in 2014 as in previous years, they continue to face significant legal challenges, financial hurdles and quickly approaching deadlines.”

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**From:** Greene, Cynthia  
**Sent:** Friday, September 12, 2014 1:18 PM  
**To:** Moskal, John  
**Subject:** FW: Cape Wind folo up

Cynthia L. Greene, Manager  
Energy and Climate Unit  
US EPA New England  
Office of Ecosystem Protection  
5 Post Office Square - Suite 100  
Mail Code: OEP05-2  
Boston, MA 02109-3912  
617-918-1813  
617-918-0813 fax  
[greenes.cynthia@epa.gov](mailto:greenes.cynthia@epa.gov)  
<http://www.epa.gov/region1/topics/envpractice/eefficiency.html>

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**From:** O'Neil, Kelsey  
**Sent:** Friday, September 12, 2014 1:18 PM  
**To:** Grantham, Nancy; Deegan, Dave  
**Cc:** Zimmerman, Emily; Greene, Cynthia  
**Subject:** RE: Cape Wind folo up

## Cape Wind signs lease agreement with South Terminal

By **Ariel Wittenberg**  
[awittenberg@s-t.com](mailto:awittenberg@s-t.com)

NEW BEDFORD — Cape Wind has signed a lease agreement with the state to use South Terminal for the staging and construction of its 130-turbine offshore wind project, marking a significant milestone in the city's efforts to become a hub for the offshore wind industry.

The offshore wind developer is expected to officially announce the news at 11 a.m. today with Gov. Deval Patrick at the Massachusetts Clean Energy Center's Wind Technology Testing Center in Charlestown.

"Cape Wind is going to be built out of New Bedford, not Rhode Island, that's the bottom line," Patrick told The Standard-Times Thursday night.

Cape Wind will file paperwork with the federal government early next week to modify its Construction and Operations Plan with the Bureau of Ocean Energy Management in order to deploy the wind project from New Bedford, company officials said.

Cape Wind had previously signed lease options with both South Terminal, now formally called the Massachusetts Marine Commerce Terminal, and Rhode Island's Quonset Point.

Mayor Jon Mitchell called the step "a historic moment" in the city's efforts to bring a new age of economic development by aligning itself with the offshore wind industry.

"New Bedford has been preparing itself for the launch of this industry for a long time and we are more ready than any port in America to become a center of the offshore wind industry," he said. "Our approach has always been what's in the city's long-term best interests, that's why offshore wind has been the subject of our relentless focus."

Later Thursday night, Mitchell — who said he was not invited to speak at today's announcement — also said he is unable to attend.

Sen. Mark Montigny, meanwhile, took exception to the exclusion of New Bedford in the name change. "I'll be looking at drafting a bill ASAP" to restore the city's name to the terminal, Montigny said Thursday night.

The name change also sparked discussion at the New Bedford City Council Thursday night where councilors were considering a motion to "strenuously object" to the change and restore the terminal to "its rightful" name as the New Bedford Marine Commerce Terminal.

For his part, Cape Wind President Jim Gordon said the lease agreement shows that he is confident South Terminal, which is still under construction, will be completed in time for Cape Wind to begin using it in January.

"We believe that we will be the first of many offshore wind projects to deploy out of this facility," Gordon said. "We know there are a lot of skilled tradesmen in the region and people who are ready to roll up their sleeves and work with us."

South Terminal, which is three months away from completion, was designed by Massachusetts Clean Energy Center specifically to accommodate the weight of offshore wind turbines and the cranes required to put them together. The facility on average will be able to support 4,100 pounds per square foot and up



to 20,485 pounds per square foot in certain places. It is being built on an accelerated schedule in order to accommodate Cape Wind's timeline.

Cape Wind will pay a total of \$4.5 million in rent to the Massachusetts Clean Energy Center, which owns the 28-acre facility, for two years. During that time, Cape Wind will be the only operator of the facility and the terms of lease allow for two one-year extensions.

Cape Wind has said that the assembly, staging and ocean construction of the project will create 600 to 1,000 jobs. Once in operation, the project is expected to employ 150 people, at least 50 of whom are expected to be based in Falmouth to do maintenance on the Nantucket Sound turbines.

The lease agreement is significant not just for Cape Wind but for New Bedford and the commonwealth's future involvement in the offshore wind industry. City officials have long stated that being the first port to stage an offshore wind farm will help the city to attract future projects and industry manufacturers.

"This is a great day for Cape Wind, the offshore wind industry, and especially for the City of New Bedford," New Bedford Wind Energy Center Director Matthew Morrissey said.

Patrick agreed.

"This will be the nation's first offshore wind farm and that's important economically from an environmental perspective and from a symbolic perspective," he said. "There is a first-mover's advantage."

---

Maximilian Boal  
Enforcement Counsel  
U.S. Environmental Protection Agency  
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Mail Code: OES04-02  
Boston, MA 02109  
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Kelsey O'Neil  
Congressional Liaison, Community Involvement Coordinator  
[oneil.kelsey@epa.gov](mailto:oneil.kelsey@epa.gov)  
Office: 617-918-1003  
Cell: 857-998-0226

---

**From:** Grantham, Nancy  
**Sent:** Friday, September 12, 2014 1:14 PM  
**To:** Deegan, Dave  
**Cc:** Zimmerman, Emily; O'Neil, Kelsey; Greene, Cynthia  
**Subject:** RE: Cape Wind folo up

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**From:** Deegan, Dave  
**Sent:** Friday, September 12, 2014 1:12 PM  
**To:** Grantham, Nancy  
**Cc:** Zimmerman, Emily; O'Neil, Kelsey  
**Subject:** Fwd: Cape Wind folo up

Not sure who/how to follow up?

~~~~~  
Dave Deegan
US EPA New England
o 617.918.1017
c 617.594.7068

Begin forwarded message:

From: "Cassidy, Patrick" <pcassidy@capecodonline.com>
Date: September 12, 2014 at 12:57:34 PM EDT
To: David Deegan-EPA <deegan.dave@epa.gov>
Subject: Cape Wind folo up

Dave,
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Patrick

Patrick Cassidy
Cape Cod Times
508-916-0415
pcassidy@capecodonline.com
On Twitter [@PCassidyCCT](https://twitter.com/PCassidyCCT) and [Facebook](https://www.facebook.com/PCassidyCCT)

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Schena, Cristeen

From: Greene, Cynthia
Sent: Friday, September 12, 2014 2:39 PM
To: Grantham, Nancy;Deegan, Dave
Subject: FW: Cape Wind folo up

John Moskal checked for Alliance reaction – see below

Cynthia L. Greene, Manager
Energy and Climate Unit
US EPA New England
Office of Ecosystem Protection
5 Post Office Square - Suite 100
Mail Code: OEP05-2
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Sent: Friday, September 12, 2014 1:18 PM
To: Moskal, John
Subject: FW: Cape Wind folo up

Cynthia L. Greene, Manager
Energy and Climate Unit
US EPA New England
Office of Ecosystem Protection
5 Post Office Square - Suite 100
Mail Code: OEP05-2
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To: Grantham, Nancy; Deegan, Dave
Cc: Zimmerman, Emily; Greene, Cynthia
Subject: RE: Cape Wind folo up

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By **Ariel Wittenberg**
awittenberg@s-t.com
September 12, 2014 12:00 AM

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Enforcement Counsel
U.S. Environmental Protection Agency
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(617) 918-1750
boal.maximilian@epa.gov

Kelsey O'Neil
Congressional Liaison, Community Involvement Coordinator
oneil.kelsey@epa.gov
Office: 617-918-1003
Cell: 857-998-0226

From: Grantham, Nancy
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To: Deegan, Dave
Cc: Zimmerman, Emily; O'Neil, Kelsey; Greene, Cynthia
Subject: RE: Cape Wind folo up

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Dave Deegan  
US EPA New England  
o 617.918.1017  
c 617.594.7068

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**From:** "Cassidy, Patrick" <[pcassidy@capecodonline.com](mailto:pcassidy@capecodonline.com)>  
**Date:** September 12, 2014 at 12:57:34 PM EDT  
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Patrick

Patrick Cassidy

Cape Cod Times

508-916-0415

[pcassidy@capecodonline.com](mailto:pcassidy@capecodonline.com)

On Twitter [@PCassidyCCT](#) and [Facebook](#)

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**Schena, Cristeen**

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**Sent:** Friday, September 12, 2014 2:37 PM  
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**Sent:** Friday, September 12, 2014 1:18 PM  
**To:** Moskal, John  
**Subject:** FW: Cape Wind folo up

Cynthia L. Greene, Manager  
Energy and Climate Unit  
US EPA New England  
Office of Ecosystem Protection  
5 Post Office Square - Suite 100  
Mail Code: OEP05-2  
Boston, MA 02109-3912



617-918-1813  
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[greene.cynthia@epa.gov](mailto:greene.cynthia@epa.gov)  
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[awittenberg@s-t.com](mailto:awittenberg@s-t.com)  
September 12, 2014 12:00 AM

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"New Bedford has been preparing itself for the launch of this industry for a long time and we are more ready than any port in America to become a center of the offshore wind industry," he said. "Our approach has always been what's in the city's long-term best interests, that's why offshore wind has been the subject of our relentless focus."

Later Thursday night, Mitchell — who said he was not invited to speak at today's announcement — also said he is unable to attend.

Sen. Mark Montigny, meanwhile, took exception to the exclusion of New Bedford in the name change. "I'll be looking at drafting a bill ASAP" to restore the city's name to the terminal, Montigny said Thursday night.

The name change also sparked discussion at the New Bedford City Council Thursday night where councilors were considering a motion to "strenuously object" to the change and restore the terminal to "its rightful" name as the New Bedford Marine Commerce Terminal.

For his part, Cape Wind President Jim Gordon said the lease agreement shows that he is confident South Terminal, which is still under construction, will be completed in time for Cape Wind to begin using it in January.

"We believe that we will be the first of many offshore wind projects to deploy out of this facility," Gordon said. "We know there are a lot of skilled tradesmen in the region and people who are ready to roll up their sleeves and work with us."

South Terminal, which is three months away from completion, was designed by Massachusetts Clean Energy Center specifically to accommodate the weight of offshore wind turbines and the cranes required to put them together. The facility on average will be able to support 4,100 pounds per square foot and up to 20,485 pounds per square foot in certain places. It is being built on an accelerated schedule in order to accommodate Cape Wind's timeline.

Cape Wind will pay a total of \$4.5 million in rent to the Massachusetts Clean Energy Center, which owns the 28-acre facility, for two years. During that time, Cape Wind will be the only operator of the facility and the terms of lease allow for two one-year extensions.

Cape Wind has said that the assembly, staging and ocean construction of the project will create 600 to 1,000 jobs. Once in operation, the project is expected to employ 150 people, at least 50 of whom are expected to be based in Falmouth to do maintenance on the Nantucket Sound turbines.

The lease agreement is significant not just for Cape Wind but for New Bedford and the commonwealth's future involvement in the offshore wind industry. City officials have long stated that being the first port to stage an offshore wind farm will help the city to attract future projects and industry manufacturers.

"This is a great day for Cape Wind, the offshore wind industry, and especially for the City of New Bedford," New Bedford Wind Energy Center Director Matthew Morrissey said.

Patrick agreed.

"This will be the nation's first offshore wind farm and that's important economically from an environmental perspective and from a symbolic perspective," he said. "There is a first-mover's advantage."

---

Maximilian Boal  
Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1  
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Mail Code: OES04-02  
Boston, MA 02109  
(617) 918-1750  
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Kelsey O'Neil  
Congressional Liaison, Community Involvement Coordinator  
[oneil.kelsey@epa.gov](mailto:oneil.kelsey@epa.gov)  
Office: 617-918-1003  
Cell: 857-998-0226

---

**From:** Grantham, Nancy  
**Sent:** Friday, September 12, 2014 1:14 PM  
**To:** Deegan, Dave  
**Cc:** Zimmerman, Emily; O'Neil, Kelsey; Greene, Cynthia  
**Subject:** RE: Cape Wind folo up

Don't know that this decision has been made --- can we pull up the story? Thanks ng

---

**From:** Deegan, Dave  
**Sent:** Friday, September 12, 2014 1:12 PM  
**To:** Grantham, Nancy  
**Cc:** Zimmerman, Emily; O'Neil, Kelsey  
**Subject:** Fwd: Cape Wind folo up

Not sure who/how to follow up?

~~~~~  
Dave Deegan
US EPA New England
o 617.918.1017
c 617.594.7068

Begin forwarded message:

From: "Cassidy, Patrick" <pcassidy@capecodonline.com>
Date: September 12, 2014 at 12:57:34 PM EDT
To: David Deegan-EPA <deegan.dave@epa.gov>
Subject: Cape Wind folo up

Dave,
I'm writing a follow up to the story today about Cape Wind's decision to choose New Bedford for its construction operations. Can you give me a call to answer some questions about any EPA actions necessary because of the change (Clean Air Act permit) and about EPA's involvement in the construction of the port terminal in New Bedford (dredging, PCBs etc.) Writing for tomorrow's paper on 5 p.m. deadline. Thanks.
Patrick

Patrick Cassidy
Cape Cod Times
508-916-0415
pcassidy@capecodonline.com
On Twitter [@PCassidyCCT](https://twitter.com/PCassidyCCT) and [Facebook](#)

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Schena, Cristeen

From: Greene, Cynthia
Sent: Friday, September 12, 2014 1:15 PM
To: Grantham, Nancy
Subject: FW: Update on Cape Wind

Cynthia L. Greene, Manager
Energy and Climate Unit
US EPA New England
Office of Ecosystem Protection
5 Post Office Square - Suite 100
Mail Code: OEP05-2
Boston, MA 02109-3912
617-918-1813
617-918-0813 fax
greenecynthia@epa.gov
<http://www.epa.gov/region1/topics/envpractice/eefficiency.html>

From: Moskal, John
Sent: Friday, September 12, 2014 12:24 PM
To: Moraff, Kenneth; Greene, Cynthia; Conroy, David; McDonnell, Ida; McCahill, Brendan; Timmermann, Timothy; Walsh-Rogalski, William
Subject: FW: Update on Cape Wind

Fyi – this from BOEM came out today.

From: Bureau of Ocean Energy Management Office of Public Affairs [<mailto:tracey.moriarty@boem.gov>]
Sent: Friday, September 12, 2014 10:13 AM
To: Moskal, John
Subject: Update on Cape Wind

Note to Stakeholders

Sept. 12, 2014



Good morning.

As one of our valued stakeholders interested in offshore renewable energy development, the Bureau of Ocean Energy Management (BOEM) would like to notify you of some recent milestones regarding the Cape Wind Energy Project.

- On May 20, 2014, Cape Wind Associates (CWA) submitted a Facility Design Report (FDR) and a Fabrication and Installation Report (FIR) for BOEM's review. The FDR provides specific details on the design of the wind power facility, and the FIR describes how the facility's components will be fabricated and installed.
- On July 25, 2014, CWA submitted revisions to its Construction and Operations Plan (COP), which BOEM originally approved in April 2011. These revisions can be found [here](#).
- BOEM reviewed the proposed revisions to the COP and prepared an [Environmental Assessment \(EA\)](#) that considered (1) whether the revisions to the COP are substantial changes in the proposed action that are relevant to environmental concerns, and (2) whether there are significant new circumstances or information, including activity and equipment details provided in the FIR and FDR, relevant to environmental concerns and bearing on the proposed action or its impacts. BOEM used the EA to determine whether it could make a Finding of No New Significant Impact (FONNSI) or whether preparing a Supplemental Environmental Impact Statement would be necessary before issuing a decision on the COP revisions.
- On September 8, 2014, BOEM issued a [FONNSI](#), which concluded that there were no new significant impacts associated with the proposed revisions to the COP that were not already considered in the 2010 Final Environmental Impact Statement. BOEM then approved the revisions to the COP with modifications on September 9, 2014, and determined that it has no objections to the FDR or FIR. BOEM's letter of approval can be found [here](#).

Additional information related to the Cape Wind Energy Project is located on BOEM's website by clicking [here](#), or you may contact me at your convenience.

Thank you,

Tracey Moriarty
Office of Public Affairs (Offshore Renewable Energy)
Bureau of Ocean Energy Management
Tel: (703) 787-1571
Cell: (202) 304-6476
Tracey.Moriarty@boem.gov

About the Bureau of Ocean Energy Management

The Bureau of Ocean Energy Management (BOEM) promotes economic development, energy independence, and environmental protection through responsible, science-based management of offshore conventional and renewable energy development.



For More Information:
BOEM Office of Public Affairs
(202) 208-6474

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20240

From: Bureau of Ocean Energy Management Office of Public Affairs <tracey.moriarty@boem.gov>
Sent: Friday, September 12, 2014 10:13 AM
To: Cooke, Donald
Subject: Update on Cape Wind

Note to Stakeholders

Sept. 12, 2014



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Tracey Moriarty
Office of Public Affairs (Offshore Renewable Energy)
Bureau of Ocean Energy Management
Tel: (703) 787-1571
Cell: (202) 304-6476
Tracey.Moriarty@boem.gov

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From: Bureau of Ocean Energy Management Office of Public Affairs <tracey.moriarty@boem.gov>
Sent: Friday, September 12, 2014 10:13 AM
To: Moskal, John
Subject: Update on Cape Wind

Note to Stakeholders

Sept. 12, 2014



Good morning.

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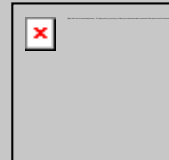
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Bureau of Ocean Energy Management
Tel: (703) 787-1571
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Tracey.Moriarty@boem.gov

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Schena, Cristeen

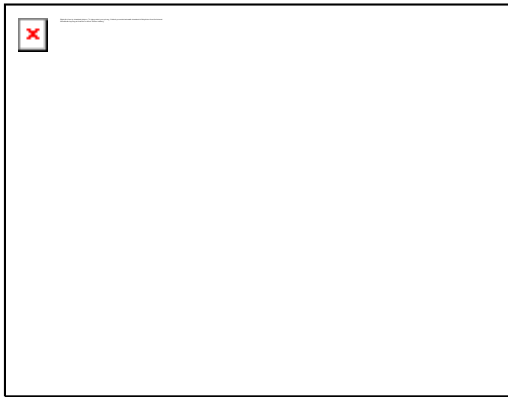
From: Fnhaggerty@aol.com
Sent: Thursday, September 11, 2014 12:49 PM
To: Spalding, Curt;Mccarthy, Gina;Shinkman, Susan;Mazakas, Pam;Stewart, Andrew;Schefski, Kenneth;Pollins, Mark;EPA-region01-RA@epa.gov;O'Neil, Kelsey;Ferrari, Joe;Wells, Sharon;Murphy, Jim;Christopher.J.Barron@usace.army.mil;cenae-pa@usace.army.mil
Subject: News Media Becomes Lap Dogs For Wind Turbine Industry

Massachusetts

<http://patch.com/massachusetts/marthasvineyard/news-medialap-dogs-huskies-wind-turbine-industry#.VBHPQrlMvIU>

News Media Watchdogs : Lap Dogs & Huskies For Wind Turbine Industry

By [Frank Haggerty \(Open Post\)](#) Updated September 11, 2014



News Media:Lap Dogs & Huskies For Wind Turbine Industry

News Media Watchdogs : Lap Dogs & Huskies For Wind Turbine Industry

Over the past several years the news industry has produced muzzled stories over massive mistakes and over spending at the New Bedford Marine Commerce Terminal aka the ocean wind turbine port aka the South Terminal port.

The Massachusetts Clean Energy Center told the public it is a multi-use port while telling Siemens wind turbine company it was a 100 percent wind turbine port 24/7.

The news media has become the quintessential lap dog for building the project writing loving, gentle, playful, happy-go-lucky news stories that at this point have got to be a major embarrassment to news reporters and the editors of the news media.

The Massachusetts news media has been duped and they still don't get it. The news media continues publishing "puff" news reports about the New Bedford ocean wind turbine port without checking the information.

The news media has taken on a new dynamic only reporting the positive information from state press releases and local meetings.

On September 8, 2014 in a conference room next to New Bedford Mayor Jon Mitchell the news media was nowhere to be found. The meeting was all bad news. You have to ask if the media was warned not to attend the meeting. After all you never want to print negative news against the state "Agenda" of 2000 megawatts of renewable energy by 2020.

The meeting was attended by residents from Cape Cod to Rhode Island. The complaint from Fairhaven residents was home owners dogs living near the river were dying of cancer, a rowing club was taking down caution PCBs signs, Fairhaven high school students playing in the water and people fishing in the river. The EPA spokesperson who acknowledged that it had received 360 million dollars recently said they didn't know how to get the message about PCBs to the public. Really ?

The Massachusetts Clean Energy spokesperson gave the bad news that 110,000 cubic yards of material and more blasting is underway after an oversight of making the channel too small. The channel going out five miles from the hurricane barrier was also only able to be used at high tide. New Bedford Harbor will not be certified for use until March of 2015.

The question of the cost of the terminal was left unanswered. We were told if anyone wants to know the cost of the terminal you could go to the Secretary of the Commonwealth and look in the Central Register. In the next breath I was told the Massachusetts Clean Energy Center is the owner of the project and is a semi quasi state agency and there may be a problem getting that kind of information. Why are they hiding the costs?

The news media owes the public an apology over its coverage of the New Bedford Marine Commerce Terminal using renewable energy money to build an ocean wind turbine port that has never had a federal permit from the Bureau of Ocean Energy Management to build wind turbines.

Alarm bells should have gone off when Richard Sullivan, the state's Energy and Environmental Affairs Secretary testified to a legislative bonding committee he was 100 percent sure Cape Wind would build its wind turbines in New Bedford.

Cape Wind has never had a permit to build wind turbines in New Bedford.

The federal BOEM, Bureau of Ocean Energy Management permit has always said Quonset Point, Rhode Island and Cape Wind has signed a lease with Quonset Point.

The news media has helped dupe the public and become the Lap Dog of the Massachusetts Clean Energy Center and the executive branch of Massachusetts government.

Schena, Cristeen

From: McDonnell, Ida
Sent: Tuesday, August 26, 2014 10:29 AM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker
Attachments: Ltr from BOEM to NOAA 6-4-14.pdf; Ltr from EPA to BOEM 8-12-14.pdf; Ltr from FWS to BOEM June 27-2014.pdf; Ltr from NOAA to BOEM with ITS 5-21-14.pdf

Sandy,

You sent me an e-mail on August 19, 2014 asking if "... if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?"

At this time, EPA is not issuing any additional permits to Cape Wind (CWA). As you know, CWA has requested EPA to extend the Phase I Construction end date for the current Outer Continental Shelf Air Permit issued to Cape Wind Associates, LLC (CWA) dated January 7, 2011. CWA has asked us to extend the end date from September 30, 2015 to September 30, 2017. EPA is currently reviewing this request and is evaluating whether CWA has met the conditions for such a change as specified in Section XI of the permit.

Section XI of the permit also contains a requirement regarding ESA. I am enclosing several letters recently sent regarding the status of the project's compliance with ESA. In particular, I have included a copy of EPA's letter to the Bureau of Ocean Energy Management where, based on the facts, EPA has determined that reinitiating the consultation requirements under ESA is unnecessary.

I will send you our determination once EPA has completed its review of CWA's extension request.

Sincerely,

Ida E. McDonnell, Manager
Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [mailto:sandyt@saveoursound.org]
Sent: Tuesday, August 19, 2014 10:20 AM
To: McDonnell, Ida
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Ida:
Thank you for your response to our questions, sorry for the delay getting back to you.

We would like to inquire if any permit has been issued and if there are any documents/correspondence with Cape Wind or with any parties outside of EPA on this permit renewal are available for you to send to us?

Again, thank you for response.

Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org

From: McDonnell, Ida [<mailto:McDonnell.Ida@epa.gov>]
Sent: Wednesday, August 13, 2014 1:31 PM
To: Sandy Taylor
Subject: RE: Follow up on 5/22/14 Cape with Audra Parker

Hi Sandy,

I have the following responses to your questions below:

1. What is the status of EPA's review of Cape Wind's extension request?

EPA is currently reviewing the Cape Wind Associates request made on March 7, 2014 to extend the end date of the Phase I construction period from September 30, 2015 to September 30, 2017

2. What is the status on of Cape Wind request, timeline and process?

EPA will either grant or deny, via a letter, the request to increase the Phase I construction period in accordance with Conditions XI.A.1-4 of the Outer Continental Shelf Air Permit OCS-R1-01. At this time we have not established a firm response date to Cape Wind Associates request. With the recent resolution of the outstanding issues involving consultation under the Endangered Species Act, my staff will now focus on reviewing all other pertinent information regarding extending the end date for the Phase I construction period. I have attached to this e-mail our letter dated August 12, 2014 to the Bureau of Ocean Energy Management. Once we have come to a decision, our response letter regarding the extension request will be signed by the Regional Administrator.

3. Will the public have an opportunity to comment?

Granting or denying the extension of the Phase I construction period does not require modifying the permit. If the permit was required to be modified, EPA would need to follow the process for modifying the permit contained in 40 CFR parts 55 and 124. At this time EPA is not planning to conduct a formal public comment period concerning the extension request.

4. EPA to provide a copy of their decision when made.

EPA will send our decision letter regarding the Phase I construction end date extension to Save Our Sound and other interested parties.

5. Will you be responding to our comment letter?

We are currently evaluating the comments made in your April 1, 2014 and will respond to you once we complete our evaluation.

Please feel free to call me if you have any further questions.

Ida E. McDonnell, Manager

Air Permits, Toxics and Indoor Programs Unit
EPA-New England, Region 1
5 Post Office Square
Boston, MA 02109-3912
Phone 617-918-1653
Fax 617-918-0653

From: Sandy Taylor [<mailto:sandyt@saveoursound.org>]
Sent: Friday, August 08, 2014 2:14 PM
To: McDonnell, Ida
Subject: Follow up on 5/22/14 Cape with Audra Parker

Ida:

I am following up your call with Audra Parker regarding Cape Wind's CA permit on 5/22/14.

There were several questions that you were going to get back to us on after reviewing them with Jill Metcalf.

- What is the status of EPA's review of Cape Wind's **EXTENSION** request?
- What is the status on of Cape Wind request, timeline and process?
- Will the public have an opportunity to comment?
- EPA to provide a copy of their decision when made.
- Will you be responding to our comment letter (see attached)?

Thank you very much,
Sandy

Sandy Taylor
Executive Assistant
4 Barnstable Road
Hyannis, MA 02601
508-775-9767
508-775-9725 (f)
sandyt@saveoursound.org
www.saveoursound.org



United States Department of the Interior

BUREAU OF OCEAN ENERGY MANAGEMENT

WASHINGTON, DC 20240-0001

Mr. J. K Bullard
Regional Administrator, NOAA
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930-2276

JUN 04 2014

Dear Mr. Bullard,

Thank you for your letter received by BOEM on May 23, 2014, with the amended Incidental Take Statement (ITS) for the biological opinion (Opinion) issued by your office on December 30, 2010, under Section 7(a)(2) of the Endangered Species Act, regarding the proposed construction, operation and future decommissioning by Cape Wind Associates, LLC (CWA) of a wind energy project offshore Massachusetts located in Nantucket Sound on the Outer Continental Shelf.

BOEM agrees that if there is any incidental take of North Atlantic right whales, humpback whales or fin whales, the specified amount or extent of incidental take will be exceeded, and, pursuant to 50 CFR Part 402.14(h)(4) and 50 CFR Part 402.16(a), consultation must be reinitiated immediately. BOEM also agrees that the amended ITS includes Reasonable and Prudent Measures (RPMs) necessary and appropriate for monitoring and reporting any incidental take of listed whales. As your letter correctly points out, these measures are consistent with monitoring and reporting requirements included in your 2010 Opinion and the measures required by BOEM in lease OCS-A 0478 held by CWA and executed on November 1, 2010. BOEM will ensure that CWA complies with the RPMs as described in the amended ITS.

Thank you for your update in this regard and we look forward to further cooperation with your office to minimize the potential effects offshore renewable energy projects in the northeast region. For further information regarding this letter, please contact Dr. Desray Reeb at (703) 787-1768 or via e-mail at Desray.Reeb@boem.gov.

Sincerely,

Ms. Michelle Morin
Chief, Environment Branch for Renewable Energy

cc: Lewandowski – BOEM
McDonnell – EPA RI
Adams – ACOE
McMillan – DOE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

AUG 12 2014

Michelle Morin
Chief, Environment Branch for Renewable Energy
Environmental Division
Bureau of Ocean Energy Management
381 Elden Street
Mail Stop 1328
Herndon, VA 20170

Dear Ms. Morin,

We have read the decision *Public Employees for Environmental Responsibility et al., 1:10-cv-01067-RBW (D.D.C., March 14, 2014)*, and are in receipt of copies of two letters addressed to you: one dated May 21, 2014, from John K. Bullard, Regional Administrator for the Northeast Region of the National Marine Fisheries, National Oceanic and Atmospheric Administration; and a second letter dated June 27, 2014, from Paul R. Phifer, Assistant Regional Director, Ecological Services, Fish and Wildlife Service.

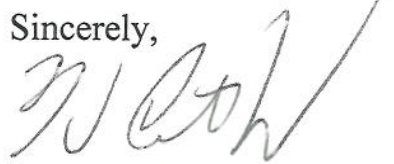
In response to the above referenced decision, Mr. Bullard's letter advises that the Incidental Take Statement (ITS) issued on December 30, 2010, is amended to include a new section entitled "ESA Listed Marine Mammals." He states that "The amended ITS includes Reasonable and Prudent Measures and implementing Terms and Conditions necessary and appropriate for monitoring and reporting any incidental take of listed whales..." He also states that "The amended ITS still includes the measures required to minimize, monitor, and report any take of sea turtles." The amended ITS, attached to the letter, states that "This concludes formal consultation with BOEM, ACOE and EPA regarding the proposed construction, operation and future decommissioning by Cape Wind Associates LLC of a wind energy project on Horseshoe Shoal."

Dr. Phifer's letter concludes that the Service has conducted the Court-ordered independent analyses of the reasonable and prudent measures, has made an administrative amendment to the Incidental Take Statement issued on November 21, 2008, and finds that no substantive changes to the final reasonable and prudent

measures in the ITS issued on November 21, 2008, are warranted. His letter states that the "consultation is complete" and confirms that the Army Corps of Engineers, Department of Energy and Environmental Protection Agency "may continue to rely on the BO [Biological Opinion] and ITS, as herein amended."

Based on these letters, and after reviewing our permit record, EPA finds no reason at this time to revisit the Outer Continental Shelf Air Permit issued by EPA for the Cape Wind Energy Project OCS-R1-01 concerning these issues, and finds that reinitiation of consultation is unnecessary. If you have any questions please contact Ida McDonnell at (617) 918-1653 or by electronic mail at mcdonnell.ida@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. Curtis Spalding", is written over the word "Sincerely,".

H. Curtis Spalding
Regional Administrator



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/Region 5/ES

JUN 27 2014

Ms. Michelle Morin
Chief, Environmental Branch for Renewable Energy
Environmental Division
Bureau of Ocean Energy Management
381 Elden Street, Mailstop 1328
Herndon, Virginia 20170

Dear Ms. Morin,

This letter serves as an administrative amendment to the U.S. Fish and Wildlife Service's (Service) Incidental Take Statement (ITS) issued with the Biological Opinion (BO) dated November 21, 2008, on Cape Wind Associates (CWA) proposed wind energy facility to be located in Federal waters within Horseshoe Shoal in Nantucket Sound. The Bureau of Ocean Energy Management¹ (BOEM) began informal consultation with the Service under section 7(a)(2) of the Endangered Species Act (ESA) starting in December of 2005. On May 19, 2008, BOEM initiated formal consultation, recognizing that its proposed action of issuing a lease to CWA was likely to cause take of the endangered roseate tern and threatened piping plover. Our BO marked the culmination of BOEM's consultation.

We issue this purely administrative amendment in response to the decision by the Federal district court in *Public Employees for Environmental Responsibility et al., v. Beaudreau et al.*, 1:10-cv-01067-RBW (D.D.C., March 14, 2014). In its memorandum opinion, the Court granted summary judgment to plaintiffs on their claim that the Service "violated the ESA by failing to make an independent determination about whether the feathering operational adjustment," proposed in our October 31, 2008 draft BO, "was a reasonable and prudent measure" (RPM). In the conclusion to its memorandum opinion, the Court remanded the case to the Service to "make the required independent determination on this point" (see Opinion at p. 88). In its order, the Court remanded "this case to the [Service] for it to issue reasonable and prudent measures consistent with [its] Memorandum Opinion." We have done so. For the reasons explained below, this administrative amendment does not require re-initiation of consultation on the Service's November 21, 2008 final BO.

¹ On October 1, 2011, the Bureau of Ocean Energy Management and Enforcement (BOEMRE), formerly the Minerals Management Service (MMS), was replaced by the BOEM and the Bureau of Safety and Environmental Enforcement (BSEE) as part of a major reorganization.

The final RPMs have not changed as a result of our analysis on remand. As directed by the Court, we hereby provide our independent evaluation of the initially proposed feathering RPM (also referenced as proposed RPM 2) and administratively amend the ITS to remove any suggestion that we may have simply delegated our authority under Section 7(b)(4)(ii) to BOEM and CWA in making our decision about the RPMs. We also confirm that the RPMs originally contained in the final BO remain reasonable and prudent.

ANALYSIS

In conducting our independent analysis on remand, we are guided by the ESA, its implementing regulations and our own Section 7 policies. According to our ESA Section 7 regulations, where the Service finds no jeopardy, we must provide in a biological opinion a written statement regarding incidental take that among other things,

“specifies those reasonable and prudent measures that the Director considers necessary or appropriate to minimize such impact”

(50 CFR 402.14(i)(1)(ii)). Those regulations also state that:

“[r]easonable and prudent measures, along with the terms and conditions that implement them, cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes”

(50 CFR 402.14(i)(2)). The Service/National Marine Fisheries Service ESA Consultation Handbook reiterates the regulatory criteria and concludes that “[t]he test for reasonableness is whether the proposed measure would cause more than a minor change to the project” (Handbook at p. 4-50 (1998)).

Because the Court did not vacate the BO or ITS in any respect or order re-initiation of consultation or the reopening of the administrative record, our analysis of the RPMs relies on the information available to us when we finalized the BO and ITS. Relevant to the economics of the originally-proposed feathering RPM, our analysis included, but was not limited to, the materials below:

- 1) A letter from James F. Bennett, MMS, to Michael Amaral, Service, New England Field Office, received November 20, 2008, and its attachments:
 - A letter from Geraldine E. Edens, McKenna Long & Aldridge, to Jill Lewandowski, MMS, dated November 18, 2008;
 - *CWA's Response to How RPM No. 2 (Operational Adjustments) Would Affect the Viability and Reliability of the Proposed Project*, dated November 5, 2008;
 - *The Fish and Wildlife Service's "Reasonable and Prudent Measure" No. 2 of the October 31st Draft Biological Opinion on the Cape Wind Proposal*, by James R. Woehr, MMS, dated November 20, 2008; and
 - *Supplemental information for Cape Wind's response to the USFWS Draft Biological Opinion*, dated November 6, 2008.

2) The expert opinion of the Service's in-house economist, Dr. Andrew Laughland, who was provided the above information, and who also considered the power market and cyclical demand as of 2008: <http://www.iso-ne.com/index.html>.

Based on the cited materials, the review by Dr. Laughland, and my conversations with staff, we find that the draft feathering RPM would not be reasonable. In particular, I highlight Dr. Laughland's analysis of the possible reduction in the development's capacity factor (*i.e.*, the proportion of time the turbines will be online) related to peak energy production time (a possible decrease of 2.1 to 22 percent of the annual capacity factor) and demand periods (*e.g.*, summer afternoons where MWH auction prices are higher). Upon considering this range, we find that the proposed RPM would alter the proposed project's basic scope and timing, and constitutes more than a minor change to the project's intent and economic outlook.⁵ Thus, the Service concludes that the draft feathering RPM should not be included in the ITS issued with the November 21, 2008 BO.

We also reviewed the other RPMs included in the November 21, 2008 ITS, and find that they are still both "reasonable and prudent" and "necessary and appropriate," so should remain unchanged.

The only needed modification to the ITS therefore is the removal of the text under the heading "Operational Adjustments" starting on page 74 and continuing for four paragraphs onto page 75 of the November 21, 2008 BO. Those paragraphs represent the Service's prior finding regarding the omission of the feathering RPM from the BO that the Court found unacceptable. The rationale provided here represents the Service's independent determination on that point. Through this letter, we make the administrative correction to the ITS by striking the above-referenced text.

The Court did not order re-initiation of consultation, nor do we conclude that re-initiation is required by our response to the remand order. The Court made no findings regarding the validity of the BO's underlying effects analysis and no jeopardy conclusion. Nor did the court invalidate the BO. The ministerial change we make here has no effect on the ultimate conclusion of the BO or the requirements of the ITS. There is therefore no reason to produce a new BO at this time. Moreover, none of the consultation triggers identified in 50 CFR 402.16 are implicated by the remand:

[R]e-initiation of formal consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if:

² Our determination that the feathering RPM would alter the basic scope and timing of the action, and also constitutes more than a minor change, is project specific. We do not intend it to be broadly applied to subsequent consultations. But in the context of this project, it is a sufficient basis upon which to conclude that the measure is not reasonable. It is even more compelling in light of the uncertainty that the Service expressed in our administrative record about whether or to what degree such a measure would actually reduce the take of the two protected bird species.

- (1) the amount or extent of incidental take is exceeded;
- (2) a new species is listed or critical habitat designated that may be affected by the action;
- (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or
- (4) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered.

Furthermore, the Court ruled in Federal Defendants' favor on all remaining claims in the litigation, which included Claim I that alleged that the Service and BOEM violated the ESA by failing to reinstate consultation on birds (*See* Second Amended Complaint, ECF No. 47, p. 37).

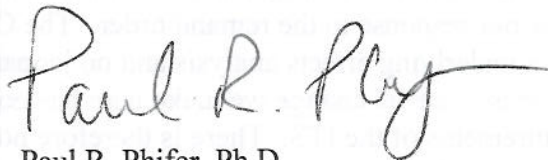
CONCLUSION

In summary, the Service has conducted the Court-ordered independent analyses of the RPMs. We find that no substantive changes to the final RPMs in the ITS issued with the November 21, 2008 BO are warranted. With the above administrative correction, the consultation is complete, and no further action by BOEM is presently required.

We are copying the Army Corps of Engineers, Department of Energy, and Environmental Protection Agency on this correspondence to make these additional action agencies aware of this ministerial change, confirm that their respective consultations remain valid and complete, and state that they may continue to rely on the BO and ITS, as herein amended.³

The Service looks forward to continued cooperation on this project. Should you have any questions regarding the consultation process or implementing the BO, please do not hesitate to contact me or my staff. Susi vonOettingen is the lead biologist for the consultation. You can reach her at 603-223-2541 or by electronic mail at susi_vonoettingen@fws.gov.

Sincerely,



Paul R. Phifer, Ph.D.
Assistant Regional Director
Ecological Services

cc: Jennifer L. McCarthy
U.S. Army Corps of Engineers

³ BOEM served as the lead agency during the consultation, on its own behalf and that of the Army Corps of Engineers. The BO therefore covers both entities. DOE and EPA independently consulted with the Service, concluding with correspondence dated April 19, 2013 and December 10, 2010, respectively.

Jill Lewandowski
Bureau of Ocean Energy Management

Matthew McMillen
Director Environmental Compliance

Ida McDonnell
U.S. EPA New England, Region I



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

MAY 21 2014

Michelle Morin
Chief, Environment Branch for Renewable Energy
Environmental Division
Bureau of Ocean Energy Management
381 Elden Street
Mail Stop 1328
Herndon, VA 20170

Re: ESA Consultation for Cape Wind

Dear Ms. Morin,

Enclosed is an amended Incidental Take Statement (ITS) for the biological opinion (Opinion), issued by us on December 30, 2010, under Section 7(a)(2) of the Endangered Species Act (ESA), to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEM) regarding the proposed construction, operation and future decommissioning by Cape Wind Associates, LLC of a wind energy project on Horseshoe Shoal in federal waters of Nantucket Sound, Massachusetts. While BOEM is the lead Federal agency for the section 7 consultation, the U.S. Army Corps of Engineers, Environmental Protection Agency and the Department of Energy also have a role in authorizing or funding the action. We will be sending a copy of this letter and amended ITS to those agencies as well.

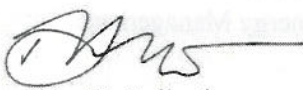
The amended ITS is being issued in response to the decision by the Federal district court in Public Employees for Environmental Responsibility et al., v. Beaudreau et al., 1:10-cv-01067-RBW (D.D.C., March 14, 2014). The amended ITS adds a new section entitled "ESA Listed Marine Mammals." It indicates that we do not anticipate any incidental take of North Atlantic right whales, fin whales and humpback whales and that the amount or extent of incidental take is set at zero. If there is any incidental take of North Atlantic right whales, humpback whales or fin whales, we will consider the specified amount or extent of incidental take to be exceeded, and, pursuant to 50 CFR §402.14(h)(4) and 50 CFR §402.16(a), consultation must be reinitiated immediately. The amended ITS includes Reasonable and Prudent Measures and implementing Terms and Conditions necessary and appropriate for monitoring and reporting any incidental take of listed whales. These measures are consistent with monitoring and reporting requirements included as part of the proposed action we analyzed in the 2010 Opinion and the measures required by the lease you issued to Cape Wind on November 1, 2010. As required in those documents, any interactions with ESA listed whales must be reported to NMFS within 24 hours.



The amended ITS still includes the measures required to minimize, monitor, and report any take of sea turtles.

We look forward to continuing to work cooperatively with your office to minimize the effects of energy projects on listed species in the northeast region. For further information regarding any consultation requirements, please contact Julie Crocker at (978)282-8480 or by e-mail (Julie.Crocker@noaa.gov). Thank you for working cooperatively with my staff throughout this consultation process.

Sincerely,


John K. Bullard
Regional Administrator

cc: Lewandowski- BOEM
McDonnell – EPA R1
Adams – ACOE
McMillan – DOE

File Code: Section 7 MMS/BOEM Cape Wind Nantucket
PCTS: NER-2010-3866

MAY 21 2014

INCIDENTAL TAKE STATEMENT- Amended

[NOTE: We have prepared this amended Incidental Take Statement in response to the decision of the Federal district court in Public Employees for Environmental Responsibility (PEER) et al., v. Beaudreau et al., 1:10-cv-01067-RBW (D.D.C., March 14, 2014) and the particular circumstances of that court's remand order.]

Section 9 of the ESA prohibits the take of endangered species. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. NMFS interprets the term "harm" as an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering (50 CFR §222.102). Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The term "harass" has not been defined by NMFS; however, it is commonly understood to mean to annoy or bother. In addition, legislative history helps elucidate Congress' intent: "[take] includes harassment, whether intentional or not. This would allow, for example, the Secretary to regulate or prohibit the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young" (HR Rep. 93-412, 1973). Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the ESA provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

Amount or Extent of Incidental Take

Sea Turtles

The proposed action has the potential to directly affect loggerhead, Kemp's ridley, green and leatherback sea turtles by causing them to be exposed to potentially harassing levels of sound during pile driving and the high resolution geophysical survey. As explained in the "Effects of the Action" section of the accompanying Opinion, only sea turtles located within a 34.56 square km area surrounding the pile being driven will be exposed to noise levels between 160 and 180 dB. As explained on page 90 of the "Effects of the Action" section, NMFS has estimated that between 3 and 7 sea turtles are likely to be exposed to disturbing levels of noise during each 4 hour pile driving event. As pile driving will occur for approximately four to six hours per pile over a period of approximately eight months, the potential for exposure will be limited to that time period only. As explained in the "Effects of the Action" section, during the high resolution geophysical survey program, any sea turtles located within 227 meters from the chirp and 386 meters from the boomer will be exposed to noise levels between 160 and 180 dB. During the survey, an area of approximately 148 square kilometers will be surveyed. Based on the estimates of sea turtle density in the action area (explained on page 90), NMFS estimates that between 13 and 28 sea turtles would be exposed to disturbing levels of noise during the survey. At any given time during the survey, an approximately 0.384 square kilometer area will have noise levels between 160 and 180 dB.

Exposure of sea turtles to sound levels greater than 160 dB will be considered harassment

because that level of noise will disturb sea turtles and their normal behaviors (i.e., resting, foraging or migrating through the area) will be interrupted. Any sea turtles located within 3.4km of the pile being driven will be exposed to these disturbing noise levels and are likely to exhibit avoidance behavior which would cause the alteration of normal behaviors. As loggerhead, Kemp's ridley, green and leatherback sea turtles are likely to be present in the action area and exposed to potentially harassing sound levels, harassment of any of these species could occur and NMFS anticipates that the 3-7 sea turtles exposed to harassing noise levels during each pile driving event and the 13-28 sea turtles exposed to harassing levels of noise during the geophysical survey will be a combination of these species. As sea turtles are only likely to occur in the action area between June and November, only pile driving occurring during these months will result in the harassment of sea turtles. Similarly, effects to sea turtles from the high resolution geophysical survey would only occur if the survey took place between June and November. Incidental take via harassment will be limited to the spatial and temporal extent indicated above.

NMFS believes this level of incidental take is reasonable given the likely seasonal distribution and abundance of sea turtles in the action area and the modeling results provided by BOEM in the BA and DEIS. In the accompanying biological opinion, NMFS determined that this level of anticipated take is not likely to result in jeopardy to these species. As explained above, any incidental take of loggerhead, Kemp's ridley, green and leatherback sea turtles will be limited to: the time period when pile driving is occurring and be limited to a 34.56 square kilometer area surrounding the pile being driven and the time period when the high resolution geophysical survey is occurring and be limited to a 0.384 square kilometer area at any given time during the survey.

ESA Listed Marine Mammals

As defined in the NMFS/FWS Endangered Species Consultation Handbook, a "not likely to adversely affect" determination "is the appropriate conclusion when effects on listed species are expected to be discountable, insignificant, or completely beneficial. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Discountable effects are those extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur" (page xiv-xv). As explained in the "Effects of the Action" and "Conclusion" sections of the accompanying Opinion, we determined that all effects to North Atlantic right whales, humpback whales and fin whales will be insignificant and discountable. As a result, we concluded that the proposed action may affect, but is not likely to adversely affect, these species and that incidental take is unlikely to occur. In situations in which NMFS does not consider take to be reasonably likely to occur, the Consultation Handbook advises NMFS to state that it does not anticipate any take (page 4-48). Consequently, in light of the Biological Opinion's analysis of, and conclusions about, the effects of the proposed action on listed whales, NMFS does not anticipate the proposed action will incidentally take any North Atlantic right whales, humpback whales or fin whales. In addition, given the PEER court's order to issue an Incidental Take Statement that addresses what number of takes would trigger reinitiation of consultation, and in light of the accompanying Biological Opinion, we are specifying that the amount of incidental take of right whales, humpbacks, and fin whales anticipated is zero. If there is any incidental take of North Atlantic right whales, humpback whales or fin whales, we will consider the

specified amount or extent of incidental take to be exceeded, and, pursuant to 50 CFR §§ 402.14(i)(4) and 402.16, consultation must be reinitiated immediately.

Reasonable and Prudent Measures and Terms and Conditions

Reasonable and Prudent Measures for ESA Listed Marine Mammals

We are not requiring any reasonable or prudent measures or terms and conditions to minimize take of right whales, humpback whales or fin whales. This is because we do not anticipate any incidental take of these whale species; therefore, there is no amount or extent of incidental take to minimize and no Reasonable and Prudent Measures to minimize take of these species are necessary or appropriate.

We have considered whether there is sufficient monitoring in place to allow us to know if take does occur. As discussed in the Opinion, several monitoring requirements are part of the proposed action. These measures are included as requirements of the lease granted to Cape Wind on November 1, 2010.¹ Specific to whales, Cape Wind is required to post a look out on all vessels associated with the project. This lookout must be on watch for whales and be in direct communication with the vessel captain so that if a whale is spotted, speed can be reduced and whales can be avoided. Part 9(1)(b)(ii) of the lease requires compliance with Notice to Lessee's (NTL) 2007-GO4 which requires reporting of any strikes of marine mammals to BOEM and NMFS within 24-hours. In the unanticipated event that a whale is struck, the incident must be reported to BOEM and NMFS within 24 hours. The combination of the dedicated lookout and the reporting requirement ensures that if a whale is struck by a project vessel, we would be promptly informed and consultation could be reinitiated. Dedicated observers are also required during the geophysical surveys and during pile driving. While we do not anticipate listed whales will be in the exclusion zone at the time the survey equipment is operating or pile driving is taking place, if project personnel do observe one or more, they must communicate those observations and initiate shut down provisions. Although the accompanying Opinion explains that listed whales are extremely unlikely to be in the action area, the requirement to monitor the Right Whale Sightings Advisory System (<http://www.nefsc.noaa.gov/psb/surveys/>) is an important complement to observing the exclusion zones. Monitoring the Right Whale Sightings Advisory System would enable project personnel to know if right whales have been sighted in the action area, including beyond the exclusion zones. All observations of protected species must be promptly reported to NMFS and all observations of injured or dead animals must be reported within 24 hours. Reporting of injured or dead whales is required during pile driving, the jet plow operations for cable laying, and the geophysical surveys by Section 9(1)(f), 9(1)(k), and 9(1)(l) of Addendum C of the lease document. We have determined that these monitoring and reporting measures are sufficient to allow us to know when a take occurs; no other monitoring and reporting requirements are necessary or appropriate. Therefore, in order to ensure that any unanticipated incidental take of whales is detected and reported, the following monitoring and reporting measures are required by this ITS:

1. BOEM and Cape Wind Associates must ensure that lookouts are posted on all project related vessels, including the geophysical survey vessels and the cable laying vessel, to monitor for the presence of whales and to communicate with the captain to slow down

¹ Lease document available at:
http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Studies/CapeWind_signed_lease.pdf

- and avoid any whales that are sighted.
2. BOEM and Cape Wind Associates must ensure that observers are present during the geophysical surveys to monitor for the presence of whales.
 3. BOEM and Cape Wind Associates must ensure that observers are present during pile driving to monitor for the presence of whales.
 4. BOEM and Cape Wind Associates must ensure that any observations of whales are reported to NMFS.

The following Terms and Conditions are required to implement the above monitoring and reporting measures. All of these Terms and Conditions are consistent with measures already part of the action considered in the Biological Opinion and required by the lease issued to Cape Wind.

1. To implement RPM #1, BOEM and Cape Wind must ensure that the Right Whale Sightings Advisory System is monitored by project personnel prior to leaving port each day. Information on right whale sightings is available at:
<http://www.nefsc.noaa.gov/psb/surveys/>
2. To implement RPM #1, BOEM and Cape Wind must ensure that a look out is posted on all vessels associated with the project. This lookout must be on watch for whales and be in direct communication with the vessel captain so that if a whale is spotted, speed can be reduced and whales can be avoided.
3. To implement RPM#1, BOEM and Cape Wind must ensure that if whales are sighted, vessel operators comply with all vessel strike avoidance measures outlined in BOEM Notice to Lessees No. 2012-G01, NMFS' regulations for approach and avoidance of right whales (50 CFR §224.103(c)), and NMFS' Northeast Regional Viewing Guidelines.
4. To implement RPM #2, BOEM and Cape Wind must ensure that observers begin monitoring at least 60 minutes prior to soft start of the pile driving. Pile driving must not begin until the zone is clear of all listed whales for at least 60 minutes. Monitoring will continue through the pile driving period and end approximately 60 minutes after pile driving is completed.
5. To implement RPM #3, BOEM and Cape Wind must ensure that observers begin monitoring at least 60 minutes prior to the start of the high resolution geophysical survey. The survey must not begin until the zone is clear of all listed whales for at least 60 minutes. Monitoring will continue through the survey period and end approximately 60 minutes after the survey is completed.
6. To implement RPM#4, BOEM and Cape Wind must ensure that all observations of listed whales are reported to NMFS within 3 days. All reports must be submitted via e-mail (incidental.take@noaa.gov) and must include the following information: (a) date and time of observation; (b) species identification; (c) location of whale and location of observer/lookout documenting the sighting; (d) any notes on the behavior of the animal(s); and, (e) description of project operations at the time of the observation.

7. To implement RPM#4, BOEM and Cape Wind must ensure that any interactions with listed whales, including a ship strike, and/or any observations of injured or dead whales, regardless of whether the injury or death was caused by project operations, must be reported via e-mail to NMFS within 24 hours (incidental.take@noaa.gov) and must include the following information: (a) date and time of observation; (b) species identification; (c) location of whale and location of observer/lookout documenting the sighting; (d) any notes on the behavior of the animal(s) and, (e) description of project operations at the time of the observation. Additionally, any interactions with listed whales or observations of injured or dead whales, must be reported as soon as practicable to NMFS' Northeast Regional Hotline (866-755-6622).

These monitoring and reporting measures and their implementing terms and conditions ensure that if the incidental take of a whale were to occur during any project activity, it will be detected and we will be notified so that consultation can be reinitiated. No other monitoring or reporting requirements are necessary.

Because take of North Atlantic right whales, humpback whales or fin whales is not anticipated, no take authorization for these species is required under the Marine Mammal Protection Act for purposes of this ITS. Although we do not anticipate any take of listed marine mammals, the MMPA Incidental Harassment Authorization issued to Cape Wind for the proposed High Resolution Geophysical Survey (79 *Federal Register* 25835-25844, May 6, 2014) will require CWA to abide by certain mitigation measures to further reduce the risk of taking marine mammals. Those measures include: establishment of an exclusion zone; shut down and delay procedures; soft-start procedures; monitoring of the exclusion zone; and reporting of all observations of marine mammals.

Reasonable and Prudent Measures for Sea Turtles

Reasonable and prudent measures are those measures necessary and appropriate to minimize and monitor incidental take of a listed species. These reasonable and prudent measures are in addition to the mitigation measures proposed by BOEM and agreed to by Cape Wind that will become a part of the proposed action (see Appendix A of the accompanying Biological Opinion). NMFS believes the following reasonable and prudent measures are necessary and appropriate to minimize and monitor impacts of incidental take of sea turtles:

1. BOEM must ensure that any endangered species monitors contracted by Cape Wind are approved by NMFS.
2. During the conduct of pile driving activities related to turbine monopile and Electrical Service Platform (ESP) installation, the 750 meter exclusion zone must be monitored by a NMFS-approved endangered species monitor for at least 60 minutes prior to pile driving.
3. During the conduct of the high resolution geophysical survey, the 500 meter exclusion zone must be monitored by a NMFS-approved endangered species monitor for at least 60 minutes prior to the survey.
4. Acoustic measurement of the first pile being driven must be conducted to confirm the

sound levels modeled by BOEM and reported in the BA.

5. Prior to decommissioning, BOEM must provide to NMFS a complete plan for decommissioning activities.

Terms and conditions to implement RPMs for Sea Turtles

In order to be exempt from prohibitions of section 9 of the ESA, BOEM must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and which outline required minimization and monitoring requirements. These terms and conditions are non-discretionary.

1. To implement RPM #1, BOEM shall provide NMFS with the names and resumes of all endangered species monitors to be employed at the project site at least 30 days prior to the start of construction. No observer shall work at the project site without written approval of NMFS. If during project construction or operations, additional endangered species monitors are necessary, BOEM will provide those names and resumes to NMFS for approval at least 10 days prior to the date that they are expected to start work at the site.
2. To implement RPM #2, observers must begin monitoring at least 60 minutes prior to soft start of the pile driving. Pile driving must not begin until the zone is clear of all sea turtles for at least 60 minutes. Monitoring will continue through the pile driving period and end approximately 60 minutes after pile driving is completed.
3. To implement RPM #2 and #3, adequate lighting must be provided on all vessels used for endangered species observation to ensure that observers can monitor the exclusion zone for listed sea turtles. If sufficient lighting can not be provided, activities must be limited to daylight hours.
4. To implement RPM #3, observers must begin monitoring at least 60 minutes prior to the start of the high resolution geophysical survey. The survey must not begin until the zone is clear of all sea turtles for at least 60 minutes. Monitoring will continue through the survey period and end approximately 60 minutes after the survey is completed.
5. To implement RPM #4, acoustic monitoring must be conducted to verify that sound levels at 3.4km from the pile being driven is less than 160 dB. Results of this monitoring must be reported to NMFS prior to the driving of any subsequent piles.
6. To implement RPM #5, if the project is to be decommissioned, BOEM must provide a complete decommissioning plan and analysis of effects on listed species to NMFS. NMFS would then review the plan to determine if reinitiation of this consultation is necessary.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize and monitor the impact of incidental take that might otherwise result from

the proposed action. Specifically, these RPMs and Terms and Conditions will ensure that no listed species are exposed to injurious levels of sound and will verify the modeling results provided by BOEM based on which NMFS has made conclusions regarding take.

RPM and Term and Condition #1 is necessary and appropriate because it is specifically designed to ensure that all endangered species monitors employed by the applicant are qualified to conduct the necessary duties. Including this review of endangered species monitors by NMFS staff is only a minor change because it is not expected to result in any delay to the project and will merely enforce the qualifications of the endangered species monitors that are already required by BOEM.

RPM and Term and Condition #2 as well as RPM#3 and Term and Condition #4 are necessary and appropriate to provide adequate monitoring by extending the time that monitoring of the exclusion zone must occur from the 30 minutes required by BOEM to 60 minutes. The normal duration of sea turtle dives ranges from 5-40 minutes depending on species, with a maximum duration of 45-66 minutes depending on species (Spotila 2004). As sea turtles can stay submerged for longer than 30 minutes, but typically surface at least every 60 minutes, it is reasonable to require that monitoring occur for at least 60 minutes to allow the endangered species monitor to detect any sea turtles that may be submerged in the exclusion zone. Increasing the time to 60 minutes is only a minor change because the observer will be on location already and an additional 30 minutes of observation is not expected to result in any effects to the project schedule. Term and Condition #3 is necessary and appropriate to provide adequate monitoring of the exclusion zone as if lighting is poor the endangered species monitors will not be able to effectively survey the exclusion zone. Requiring adequate lighting is only a minor change because the vessels will already have some lighting and the addition of extra lighting is not expected to be more than a minor cost and not cause any delay of the project. If sufficient lighting can not be provided and activities must be curtailed during the dark, the delay in project schedule will be only a few hours and this is not expected to result in more than a minor cost and minor effect on overall project schedule.

RPM #4 and Term and Condition #5 are necessary and appropriate because they are designed to verify that the sound levels modeled by BOEM are valid and that the 3.4km zone where sound levels are expected to be greater than 160dB is accurate. This RPM and Term and Condition does not cause more than minor changes because Cape Wind is already required by BOEM to conduct monitoring of underwater sound levels associated with the driving of the first three piles. These measurements must be taken at 100m, 500m and 750m in two directions either west, east, south or north of the pile driving site. The addition of one additional monitoring site for one pile driving event will not cause delays to the project or add a significant cost. RPM #5 and Term and Condition #6 is necessary and appropriate as way to help monitor the proposed action and incidental take by ensuring that the effects of any decommissioning activities on listed species have been adequately analyzed. As it is impossible to predict the exact decommissioning scenario and the status of listed species at the time of decommissioning it is necessary to review the decommissioning plan when it is developed.

These RPMs and Terms and Conditions in conjunction with the mitigation measures proposed by BOEM and agreed to by Cape Wind that will become a part of the proposed action will serve to

minimize and monitor incidental take of listed species.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. NMFS has determined that the proposed action is not likely to jeopardize the continued existence of any listed species. To further reduce the adverse effects of the proposed actions, NMFS recommends that BOEM work with the applicant, Cape Wind Associates, to implement the following conservation recommendations.

1. To the extent practicable, pile driving should be minimized during the June – October timeframe when sea turtles are expected to occur in the action area.
2. As there is limited data on use of Nantucket Sound by listed sea turtles, BOEM and/or Cape Wind should support additional survey effort. This could include aerial surveys of the action area specifically targeting sea turtles.

REINITIATION OF CONSULTATION

This concludes formal consultation with BOEM, ACOE and EPA regarding the proposed construction, operation and future decommissioning by Cape Wind Associates LLC of a wind energy project on Horseshoe Shoal. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) a new species is listed or critical habitat designated that may be affected by the action; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered.